

Filed 12/6/18 by Clerk of Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2018 ND 252

State of North Dakota,

Plaintiff and Appellee

v.

Mark Hebert,

Defendant and Appellant

No. 20180171

Appeal from the District Court of Morton County, South Central Judicial District, the Honorable David W. Nelson, Surrogate Judge.

REVERSED.

Per Curiam.

Brian D. Grosinger, Assistant State's Attorney, Mandan, ND, for plaintiff and appellee.

April E. Olson (argued), Tempe, AZ, Peter Schoenburg (on brief), Albuquerque, NM, and Bruce D. Nestor (on brief), Minneapolis, MN, for defendant and appellant.

State v. Hebert
No. 20180171

Per Curiam.

[¶1] Mark Hebert appeals from a criminal judgment convicting him of tampering or damaging a public service. The district court found Hebert's conduct, by standing on or near railroad tracks, amounted to tampering with a public service. Hebert argues the district court misinterpreted the law and the conduct alleged could not have supported a conviction for tampering or damaging a public service. We agree, concluding *State v. Jessee*, 2018 ND 24, 919 N.W.2d 335, is dispositive of this appeal. We summarily reverse the district court's judgment under N.D.R.App.P. 35.1(b), concluding the evidence did not establish Hebert's presence on or near the tracks constituted tampering with tangible property. *See Jessee*, at ¶ 13 (tampering under N.D.C.C. § 12.1-21-06(1)(a) requires a change, alteration, or harmful conduct towards the tangible property of another).

[¶2] Gerald W. VandeWalle, C.J.
Lisa Fair McEvers
Daniel J. Crothers
Jerod E. Tufte
Jon J. Jensen